

MONTANA LEGISLATIVE HISTORY

Chapter 238 19 87

Bill H 246 S _____

Original bill & history ☒ c

H. Committee on Natural Resources

Hearing Date(s) 1/23 _____ c

2/13 ~~2/13~~ _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Natural Resources

Hearing Date(s) 3/11 _____ c

3/11 ~~3/11~~ _____ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HB 246 INTRODUCED BY COBB
REQUIRING WELL-SPACING UNIT; POOLING APPLICANTS TO
GIVE ACTUAL NOTICE

1/16 INTRODUCED
1/16 REFERRED TO NATURAL RESOURCES
1/23 HEARING
2/16 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/18 2ND READING PASSED 95 0
2/19 3RD READING PASSED 91 1

TRANSMITTED TO SENATE
2/21 REFERRED TO NATURAL RESOURCES
3/11 HEARING
3/12 COMMITTEE REPORT--BILL CONCURRED
3/17 2ND READING CONCURRED 50 0
3/19 3RD READING CONCURRED 49 0

RETURNED TO HOUSE
3/23 SIGNED BY SPEAKER
3/23 SIGNED BY PRESIDENT

3/24 TRANSMITTED TO GOVERNOR
3/27 SIGNED BY GOVERNOR
CHAPTER NUMBER 238 EFFECTIVE DATE: 10/01/87

HB 247 INTRODUCED BY COBB
ALLOCATION OF B-10 LICENSES BY FISH AND GAME
COMMISSION

1/16 INTRODUCED
1/16 REFERRED TO FISH & GAME
1/27 HEARING
2/19 TABLED IN COMMITTEE

HB 248 INTRODUCED BY SIMON
RECOVERY OF STATEWIDE CENTRALIZED SERVICE COSTS
BY REQUEST OF DEPARTMENT OF ADMINISTRATION

1/16 INTRODUCED
1/16 REFERRED TO APPROPRIATIONS
1/16 FISCAL NOTE REQUESTED
1/19 FISCAL NOTE RECEIVED
1/27 HEARING
2/09 COMMITTEE REPORT--BILL PASSED
2/11 2ND READING PASSED 96 1
2/12 3RD READING PASSED 97 2

TRANSMITTED TO SENATE
2/13 REFERRED TO FINANCE & CLAIMS
3/05 HEARING
3/06 COMMITTEE REPORT--BILL CONCURRED
3/10 2ND READING CONCURRED 50 0
3/12 3RD READING CONCURRED 50 0

RETURNED TO HOUSE
3/16 SIGNED BY SPEAKER
3/17 SIGNED BY PRESIDENT

3/18 TRANSMITTED TO GOVERNOR
3/22 SIGNED BY GOVERNOR
CHAPTER NUMBER 158 EFFECTIVE DATE: 7/01/87

HB 249 INTRODUCED BY KITSELMAN

1 House BILL NO. 246
2 INTRODUCED BY Cobb
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE APPLICANTS
5 FOR THE ESTABLISHMENT OF A WELL SPACING UNIT FOR AN OIL OR
6 GAS WELL OR FOR THE POOLING OF INTERESTS IN A WELL SPACING
7 UNIT TO GIVE ACTUAL NOTICE TO INFORM PARTIES AFFECTED BY THE
8 APPLICATION; AND AMENDING SECTION 82-11-141, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 82-11-141, MCA, is amended to read:
12 "82-11-141. Administrative procedure. (1) Unless
13 otherwise provided, the Montana Administrative Procedure Act
14 applies to this chapter.

15 (2) An order or amendment thereof, except in an
16 emergency, may not be made by the board without a public
17 hearing upon at least 10 days' notice. The public hearing
18 shall be held at such time and place as may be prescribed by
19 the board, and any interested person is entitled to be
20 heard.

21 (3) When an emergency requiring immediate action is
22 found to exist, the board may issue an emergency order
23 without advance notice or hearing which shall be effective
24 upon promulgation. An emergency order may not remain in
25 effect more than 15 days.

1 (4) If notice is required by the chapter and the
2 Montana Administrative Procedure Act does not apply, the
3 notice shall be made by publication in one or more issues of
4 a newspaper in general circulation in Helena and a newspaper
5 of general circulation in the county where the land or some
6 part thereon is situated, and the board may also cause
7 publication to be made in a trade journal or bulletin of
8 general circulation in the oil and gas industry in the
9 state. A person who applies to establish a well spacing
10 unit under 82-11-201 or who applies to pool all interests in
11 a well spacing unit pursuant to 82-11-202 is required to
12 give actual notice by means reasonably calculated to inform
13 all parties who may be affected by the application.

14 (5) Proof If actual notice is not possible, proof of
15 service by publication under subsection (4) shall be made by
16 the affidavit of the printer or publisher of the newspaper,
17 trade journal, or bulletin in which the notice is published
18 or by a foreman or principal clerk of the newspaper,
19 bulletin, or trade journal.

20 (6) Except as provided otherwise in this chapter, the
21 board may act upon its own motion or upon the petition of an
22 interested person. On the filing of a petition concerning a
23 matter within the jurisdiction of the board, the board shall
24 promptly fix a date for a hearing thereon and shall cause
25 notice of the hearing to be given. The hearing shall be held

LC 1265/01

1 without undue delay after the filing of the petition. The
2 board shall enter its order within 30 days after the
3 hearing."

-End-

STATUS SHEET

50th LEGISLATIVE SESSION

NATURAL RESOURCES COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
56	1/7/87	1/7/87	1/7/87	Reassigned to another committee.							
154	1/19/87	1/19/87	1/21/87	tabled							
208	1/21/87	1/2/187	1/23/87			1/23/87					
230	1/23/87	1/23/87	1/23/87			1/23/87					
246	1/23/87	1/23/87	2/13/87			2/13/87					
290	1/26/87	1/26/87	1/26/87	1/26/87							
308	1/28/87	1/28/87	2/2/87	2/2/87							
328	1/26/87	1/26/87	2/2/87		2/2/87						
343	1/26/87	1/28/87	1/28/87	1/28/87							
358	1/30/87	1/30/87	2/9/87			2/9/87					
370	1/28/87	1/28/87	2/9/87	(1/28/87 to subcommittee)							
388	1/28/87	1/28/87	1/28/87			1/28/87					
297	1/30/87	1/30/87	2/11/87			2/11/87					
404	1/30/87	1/30/87	2/6/87			2/6/87					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
HOUSE OF REPRESENTATIVES
50TH LEGISLATIVE SESSION

January 23, 1987

The meeting of the Natural Resources Committee was called to order by Chairman Tom Jones on January 23, 1987, at 1:00 p.m. in Room 312 of the State Capitol.

ROLL CALL: All committee members were present.

HOUSE BILL NO. 230: Rep. Marion Hanson, District #100, sponsor, stated HB 230 was at the request of the Department of State Lands, which generally revises the Montana Strip and Underground Reclamation Act, in order to bring it in compliance with federal law. Currently, the strip, underground coal, and uranium mining are regulated under the Montana Strip and Underground Reclamation Act. However, several related activities are not, including the remining of previously mined abandoned sites and the processing of coal prior to end use, either on or off-site. She stated both have the potential for impact including the damaging of hydrologic resources and the potential for sites to remain unreclaimed. Minor changes have been proposed to amend the act, under which coal and uranium mining are regulated. The net effect of the changes is to allow regulation of remining activities of coal preparation. By adding these two activities to the list, it insures Montana the reclamation of the sites where these activities take place, as well as insure minimization of off-site impact. Some of the sites would be abandoned mine sites, and by requesting reclamation, monies from the abandoned sites are potentially a greater significance. The U.S. Office of Surface Mining Reclamation, which oversees the Montana program, is requiring such regulation. As a result of several court cases, state law must conform with federal law in order to insure the state's ability to continue the regulating of coal reclamation activities within the state. In addition, the fee for mining related activities is purposed to increase \$50 which would bring the application fee in line with other fees provided for in the act. The proposed change would make the fee equitable for both types of operation.

PROPOSERS: Dennis Hemmer, Director, Department of State Lands, submitted testimony (Exhibit #1). He stated the major effect of these changes is to allow regulation of remining activities and of coal preparation (prior to end use). By adding these two activities to the list of regulated activities, Montana is able to assure the reclamation of the sites where these activities take place, as well as

assure minimization of off-site impacts. The other main reason for requiring remining and coal preparation activities to be regulated is because the U.S. Office of Surface Mining Reclamation and Enforcement, which oversees the program, is requiring such regulation. Much of this, at the federal level, is the outgrowth of several court decisions. The state act must conform to the federal act. The Department recommends approval of the bill.

JIM MOCKLER, Executive Director, Montana Coal Council, stated they had no objections to the bill, and obviously, must comply with federal laws.

KEN WILLIAMS, on behalf of Western Energy, stated support for HB 230 as amended by the Department.

NO OPPONENTS

REP. SIMON asked what would happen if they did not change the laws to comply?

MR. HEMMER stated they are being required by OSM, and if they did not have their law as effective, at that point, the federal officers of OSM would come in and take over the state program.

REP. COBB asked Mr. Hemmer what a "gob pile" was.

MR. HEMMER stated "gob pile" was coal waste usually related to underground activities and composed mostly of dirt and coal.

REP. HARPER questioned the amendment and felt it was taking out something the bill was written to put in.

DENNIS HEMMER stated what was involved was the concern of getting into an act drafted primarily for the mining operation without covering those facilities. Primarily, it was trying to take out an area that may be confusing and make it very clear that they apply to the whole spectrum of the mining facilities.

REP. HANSON closed by stating it was important for the state to have the control to keep in compliance with the federal requirements, and not turn our "at hand" authority over to someone out of state.

HEARING WAS CLOSED ON HB 230.

HOUSE BILL NO. 246: Rep. John Cobb, District #42, sponsor, stated HB 246 was at the request of a private citizen, and required applicants who wish to establish a well spacing

unit for an oil and gas well or for the pooling of interest in well spacing unit, to give actual notice to inform parties effected by the application. At this time, he asked the committee to hold the bill until, at which time, some of the oil companies might have a chance to look into more detail of what "notice" actually meant in order to clarify existing language. He stated there were several questions in that area, and he would like to be able to hear from these companies and report to the committee before they make a final decision. He added the bill simply clarified the need to give better notice to those parties who have the units. Notice was important, due to the fact these units had a large effect on original revenue and types of payments. He reserved the right to close.

PROPOSERS: Tommy Butler, attorney for the Department of State Lands, stated he appeared that day as a private citizen. He stated he was surprised there were not notice provisions available at the present time. To clarify, HB 246, spacing established an area of a single producing or gas formation that can efficiently and economically drain from one well. The other function of the board was to pool the interests within the space unit that establishes specific fractions of production in that single well, to which each owner was entitled to receive. The reason for the bill was to give the farmers and ranchers constitutional protection. Other states have had the same set up. The Oklahoma court case stated that if an oil company knew the actual address of the owner of mineral interests and intended to pool the well without giving that person actual notice, that would be unconstitutional and could not be done. Enacting HB 246 would require those companies to give actual notice to the farmers and ranchers. He did suggest more explicit language to alleviate specificity including at least 20 days prior to the hearing date so applicants can establish a well spacing unit for pooling, and written notice be served to record holders of the oil tax and lease hold interests sought to be spaced or pooled.

JEROME ANDERSON, attorney, representing Shell Oil Company, stated they understood the problem, but would like to have the opportunity to look and see what has been done in other surrounding states so notice provisions would be reasonable and capable of being carried out. Shell supported HB 246 with the amendment.

NO OPPONENTS

REP. ADDY asked what other notices were required to be given to the record holder per the amendment. He also wondered if there were other kinds of notices required to be given the same way.

MR. BUTLER stated the notice would not be given through the Clerk and Recorder's Office, but mailed directly to the address. If the leases were updated frequently there was less chance of the address being incorrect or obsolete. If they were not, other notices were required giving addresses to those people having a lease hold interest who were more likely to keep their address accurate knowing they could expect to get all notices at that address. It should be made clear how important it is to update the addresses on a periodic basis.

REP. MILES asked Mr. Butler to elaborate on what the consequences of inadequate notice would be and, if notice was given, what opportunities did they have that they would otherwise not have.

MR. BUTLER stated the opportunities are to actually appear with the chances of possible overreaching on the part of unethical individuals. He stated, as in Oklahoma, people look at the poolings and determine who the unleased mineral interest owners were. If those owners were in other states, they then offer to buy the mineral interests for a ridiculous sum. Therefore, if you did not know what was going on, you would be selling away a valuable right.

REP. ASAY stated a case of an unrecorded mineral interest where someone had the minerals and sold their property with no present mandate recorded. Then, two or three at a time, people could actually own the mineral rights with there being no record of it. Presently, they have tried to correct it with not too much success; however, he wondered what would happen if a pooling arrangement were perhaps set up that was not recorded.

MR. BUTLER stated generally, most people, before attempting to drill a well, usually tried to add at least 95% of the leaseholder interest. Otherwise, it was not prudent to drill a well. There are a number of significant interests outstanding; however, sometimes title changes just did not show up regarding mineral interests and that was when the attorneys step in and go to work.

REP. COBB closed by asking the committee to hold taking any action until Monday or Wednesday to allow these companies to work out the language. He stated it was important to give accurate notice if it could not be worked out. The law could stay the way it was.

HEARING WAS CLOSED ON HB 246.

DAILY ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan 23, 1987

NAME	PRESENT	ABSENT	EXCUSED
TOM JONES, CHAIRMAN	X		
CLYDE SMITH, VICE CHAIRMAN	X		
KELLY ADDY	X		
TOM ASAY	X		
JOHN COBB	X		
BEN COHEN	X		
ED GRADY	X		
JOHN HARP	X		
HAL HARPER	X		
MIKE KADAS	X		
AL MEYERS	X		
JOAN MILES	X		
MARY LOU PETERSON	X		
BOB RANEY	X		
RANDE ROTH	X		
ANGELA RUSSELL	X		
BRUCE SIMON	X		
BILL STRIZICH	X		
STAFF: EQC HUGH ZACKHEIM			

VISITOR'S REGISTER

NATURAL RESOURCES

COMMITTEE

BILL(S) HB 230; HB 246DATE JANUARY 23, 1987SPONSOR(S) HANSON; COBB

NAME	REPRESENTING	BILL NO.	SUP-PORT	OP-POSE
<i>Jim Mockler</i>	<i>Mt. Carl Consol</i>	<i>230</i>	<i>✓</i>	
<i>Tommy Battle</i>	<i>self</i>	<i>246</i>	<i>✓</i>	
<i>Deborah Riche</i>	<i>self</i>	<i>230</i>		<i>✓</i>
<i>Ken Williams</i>	<i>Enoch. NECO</i>	<i>230</i>	<i>✓</i>	
<i>George Hudson</i>	<i>Shelby Fork Exp</i>	<i>246</i>		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR VISITOR'S STATEMENT.
IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

FEBRUARY 13, 1987

The meeting of the Natural Resources Committee was called to order by Chairman Jones on February 13, 1987, at 12:30 p.m. in Room 312 of the State Capitol.

ROLL CALL: All committee members were present.

HOUSE BILL NO. 657: REP. PAUL RAPP-SVRCEK, District #51, sponsor, stated many years ago, the fishing was good along the Clark Fork River. In the early 1960's, the Noxon Rapids Reservoir was built, and at the time the dam was being built, there was some promise made of a fish ladder being built along side the dam, in order to preseve the fishery. He stated for one reason or another, the fish ladder was never built, and the dam was, which created a large run of the river reservoir. Since that time, trout fishing in that portion of the river has diminished dramatically. The only way to keep the trout fishing going in that part of the river at the present time, is for the DFWP to constantly stock the river. For the last seven years, the Department has done a commendable job in attempting to establish a small mouth bass fishery in the Noxon Rapids Reservoir. Approximately two years ago, in a matter of a couple days, the water level of the reservoir was dropped, estimates run between 30 to 75 feet, and if effectively destroyed five years of work in establishing this bass fishery in that area. So, that is the reason for the bill, and he pointed out to the committee, that his original intention was to prevent that kind of thing from happening ever again, but he found in drafting the bill, you cannot do that, because you would run afowl of the Federal Energy Regulatory Commission rules and says, we cannot regulate federal power facilities. So, what the bill does, is require operators of hydroelectric facilities to consult with these agencies regarding their operations and how they might affect fisheries once that initial consultation takes place, then in the future, if they are going to alter their operations, such that it would adversely affect the fisheries, they would again have to notify these Departments involved and also provide adequate notice that this draw down is going to take place. He urged the committee to support this bill.

PROPOSERS: STAN BRADSHAW representing Trout Unlimited stated they do support this bill, however, he did have one suggestion that may be considered regarding the Department consultation.

TERRY MURPHY representing the Montana Farmer's Union stated they do oppose and asked the committee to not pass the bill.

NO FURTHER OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

In closing, Rep. Spaeth stated he felt there were some areas that dealt with some controversy, however, he felt these changes being proposed are extremely needed in the bill. He also pointed out to the committee that he would have no objections to changing Section 7. With that he urged the committee to give this bill favorable passage.

HEARING CLOSED ON HB 642.

EXECUTIVE SESSION

HOUSE BILL NO. 246: REP. COBB moved HB 246 DO PASS. He also moved the amendments to the bill and distributed a copy to the committee (Exhibit 7). Question was then called on the amendments, the motion CARRIED unanimously. Rep. Cobb then moved HB 246 DO PASS AS AMENDED. Question being called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-5.

HOUSE BILL NO. 416 STATEMENT OF INTENT: CHAIRMAN JONES pointed out to the committee they had previously acted on HB 416, however, the Statement of Intent finally caught up with the bill, and required action.

REP. RANEY moved to adopt the Statement of Intent. Question being called, the motion CARRIED unanimously.

HOUSE BILL NO. 631: REP. SIMON moved to TABLE HB 631. Question was called, the motion CARRIED, with Reps. Raney, Asay, and Russell voting NO.

HOUSE BILL NO. 629: REP. HARPER moved HB 629 DO PASS. Rep. Asay stated he felt the large bonding requirement in the bill would be a real problem, and felt an amendment should be offered in this regard. He stated he really had no objection to the regulations enforced, however, he felt the bond section was a problem and should be altered.

REP. KADAS argued this stating he felt the bonding requirement is relative to the potential impacts, and felt this should remain as written in the bill.

Question being called, the motion CARRIED, with Reps. Asay and Cobb voting NO.

HOUSE BILL NO. 657: REP. SMITH moved HB 657 DO NOT PASS. He felt this was a bad bill.

Rep. Cobb

Amendments to HB 246

1. Title, line 7.

Strike: "ACTUAL"

Insert: "WRITTEN"

2. Page 2, line 9.

Strike: "A"

Insert: "At least 20 days prior to the public hearing, a"

3. Page 3, lines 11 through line 13

Strike: "is" on line 11 through line 13 in its entirety

Insert: "shall cause written notice of any hearing thereon to be served upon the record owners of the oil and gas and leasehold interests sought to be spaced or pooled. Notice must be given by mailing the written notice, postage prepaid, to their addresses as shown by the record of the county clerk and recorder at the time the notice is given."

4. Page 2, line 14.

Strike: "actual"

Insert: "written"

STANDING COMMITTEE REPORT

FEBRUARY 13

19 97

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 246

☒ do pass

☐ do not pass

☐ be concurred in

☐ be not concurred in

☒ as amended

☐ statement of intent attached

REP. TOM JONES

Chairman

1. Title, line 7.

Strike: "ACTUAL"

Insert: "WRITTEN"

2. Page 2, line 9.

Strike: "A"

Insert: "At least 20 days prior to the public hearing, a"

3. Page 2, lines 11 through 13

Strike: "is" on line 11 through line 13 in its entirety

Insert: "shall cause written notice of any hearing thereon to be served upon the record owners of the oil and gas and leasehold interests sought to be spaced or pooled. Notice must be given by mailing the written notice, postage prepaid, to their addresses as shown by the record of the county clerk and recorder at the time the notice is given."

4. Page 2, line 14.

Strike: "actual"

Insert: "written"

5. Page 3.

Following: line 3

Insert: "NEW SECTION. Section 2. Extension of authority. Any existing authority of the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act."

FIRST

WHITE

reading copy ()

color

CHAIRMAN--SEN. TOM KEATING
NORMAL SCHEDULE==> SITE: ROOM 405

DAYS: M-W-F

TIME: 1:00 P.M.

SECRETARY--NADINE MCCURDY

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0208	2/02	3/04		CONCUR		3/4
ADDY, KELLY			ALLOWING STATE OIL LESSEES TO DEDUCT PROPORTIONALLY OIL TRANSPORTATION COSTS			
HB0230	1/30	2/11		CONCUR		
HANSON, MARIAN		2/24	AN ACT TO GENERALLY REVISE THE STRIP AND UNDERGROUND MINE RECLAMATION ACT			2/24
HB0239	2/02	3/04		CONCUR		3/4
BRANDEWIE, RAY			REVISE COORDINATE SYSTEM USED FOR LAND SURVEYS			
HB0246	2/21	3/11		CONCUR		3/11
COBB, JOHN			REQUIRING WELL-SPACING UNIT; POOLING APPLICANTS TO GIVE ACTUAL NOTICE			
HB0290	1/30	3/04		CONCUR		3/4
SPAETH, GARY			AUTHORIZES DNRC TO ISSUE PERMITS FOR LARGE GROUNDWATER USES IN CARBON COUNTY			
HB0308	2/10	3/06		CONCUR		3/6
MILES, JOAN			EXEMPTS DAMS FROM THE DAM SAFETY ACT THAT ARE SUBJECT TO THE MFSA			
HB0343	2/19	3/06		CONCUR		3/6
DONALDSON, GENE			GIVES A REBUTTABLE PRESUMPTION TO CERTAIN FLOODWAY & FLOODPLAIN DESIGNATIONS			
HB0358	2/16	3/18		CONCUR		3/18
BARDANOUE, FRANCIS			REVISE USE OF WATER DEVELOPMENT FUNDS			
HB0370	2/17	3/11		CONCUR		3/11
ASAY, TOM			GENERALLY REVISES LAWS RELATING TO THE OPENCUT MINING ACT			
HB0388	2/05	3/09		CONCUR AS AMENDED		3/9
ASAY, TOM			CLARIFIES THE DETERMINATION OF MARKET VALUE OF WATER PROJECTS			
HB0397	2/23	3/11 3/16		CONCUR AS AMENDED		3/16
SPAETH, GARY			INCREASES THE KILOVOLT THRESHOLD FOR TRANSMISSION LINES UNDER THE MFSA			

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

March 11, 1987

The meeting began at 1:00 p.m., in Room 405 of the State Capitol Building and was called to order by Senator Gage, who was asked by the committee members to preside since the chairman and vice-chairman were in other committees presenting bills.

ROLL CALL: All members present.

CONSIDERATION OF HOUSE BILL 397: Representative Gary Spaeth, District 84, introduced HB 397, which would amend the Facility Siting Act that was enacted in 1973. At the present time, lines 69kv or less are exempted from the requirements of environmental review by the Board of Natural Resources. HB 397 would exempt power lines of up to 115kv. Rep. Spaeth then distributed amendments to the members of the committee. (Exhibit 1) Amendments do not change the bill, Rep. Spaeth explained, but amendments contain better and clearer language. If the amendments are adopted, however, HB 397 would exempt power lines with 115kv or under from MFSA provided that 75 percent of the landowners along with 75 percent of the power line route agree. If there is any controversy by landowners, then facility would have to go through the act. Rep. Spaeth said that the bill takes into account public interest and the amendment would give landowners more "say". It was Rep. Spaeth's contention that landowners and utility companies would deal in good faith on an "across the table" basis as opposed to boardrooms of the Natural Resources Department. HB 397 would save the consumers money because going through the siting process costs the utility company an exorbitant amount of money. Rep. Spaeth concluded his introduction by saying that there is not much difference between a 69kv line and a 115kv line.

PROPOSERS: Arthur V. Wittich, a representative from the Montana Power Company, who distributed written testimony (Exhibit 2), answered that HB 397 is a fresh look at the MFSA and that no law should be considered inviolate. Mr. Wittich stated that times change, ideas change, people change, and so should the law. Mr. Wittich testified that HB 397 only affects the smaller transmission lines and does not "gut" the MFSA. The explanation was made by Mr. Wittich that HB 397 prevents regulatory over-kill that is going on and explained that the process of the original act which required:

1) that the Utility Co. or Co-op show that the facility is needed.

Senator Weeding said that his point was the response was made to the public interest and not a "nose count" of landowners; and that response to public interest perhaps would not be the same under HB 397.

Senator Walker asked how many miles of various lines MPC owns. Mr. Gene Braun, MPC attorney, listed the following approximate figures:

69 kv lines	700 - 800 miles
100 kv lines	1,000 - 1500 miles
230 kv lines	800 - 900 miles
161 kv lines	1,000

CLOSING: Representative Spaeth explained that, in the beginning he was uncomfortable with HB 397, but with the amendments, he feels it is a good measure. He stated also that 75% of the landowners is a very high standard. Referring to Senator Weeding's comments, Rep. Spaeth said that sometimes public interest judgment calls by DNRC have been very close, i.e., 51% may cause BNRC to site line in one place. With HB 397 in effect, landowners affected would be able to negotiate which places a heavy burden on the Montana Power Company to negotiate individually with landowners. He then announced that Senator Jacobson would like to carry HB 397 in the Senate.

Senator Keating, Chairman, then announced that the hearing for HB 397 was closed.

CONSIDERATION OF HOUSE BILL 246: Representative Cobb, House District 42, sponsor of HB 246, explained that it would require written notice of public hearing be sent to all royalty and mineral owners by the person who applies to establish a well spacing unit or who applies to pool all interests in a well spacing unit.

PROPOSERS: Tom Butler, attorney for the Department of State Lands, stated that he was appearing before the committee as a private citizen on his own time and explained that he had requested Representative Bulger to sponsor HB 246. He also stated that "spacing" establishes area that can best be drained by one well to conserve pressure. "Pooling" he said establishes a fraction of production that each surface owner receives and, under current law, notice is only published in newspapers and oil and gas journals. Mr. Butler made it clear that HB 246 makes it fairer for the royalty owner to receive written notice and cited a case in Oklahoma whose law was the same as Montana's current law and whose courts said that NOTICE HAS TO BE GIVEN TO ROYALTY OWNERS and to only give notice by newspaper publication is unconstitutional.

OPPONENTS: None

QUESTIONS (AND/OR DISCUSSION) FROM COMMITTEE: Senator Gage said that many times people have a more current address of mineral and royalty owners than the Clerk & Recorder has and asked Representative Cobb whether a provision should be made in the bill. Rep. Bulger replied he would have no problem adding the provision, but questioned the necessity since common practice is to send mail to the most current addresses known.

Chairman Keating stated that sometimes spacing is done through the quarterly hearing of the Board of Oil and Gas and questioned if that is the case, would the operator still be required to comply with HB 246 as well as notice given through the oil and gas commission.

Rep. Bulger said written notice as required by HB 246 would be the sole means of notification.

CLOSING: Representative Cobb stated that all the facts had been presented, and the hearing was closed on HB 246.

CONSIDERATION OF HOUSE BILL 370: Representative Asay from House District 27, sponsor of HB 370, said it dealt with three aspects of the Opencut Mining Act which for all intents and purposes refers to gravel pits. HB 370 would allow the following:

1. County that holds a valid opencut mining permit can remove up to 1,000 yards of gravel for emergency situations without department's approval.
2. Department would have input about reclamation.
3. Assessment of reasons for violations would be made before penalty decisions are made by the department.

PROPONENTS: Gary Amestoy, Department of State Lands, stated that HB 370 responds to county concerns. Criteria in the bill would protect environment and public interest and would allow better reclamation beyond pit area. (Exhibit 13)

George Ochenski, Montana Environmental Information Center, stated his support of HB 370.

OPPONENTS: None.

QUESTIONS (AND/OR DISCUSSION) BY COMMITTEE: Senator Gage said that "types" of minerals had been removed from the bill and asked if that would affect coal, etc. Mr. Amestoy stated that minerals refers to bentonite, clay, scoria, phosphate rock, sand, and gravel only.

DISPOSITION OF HOUSE BILL 246: Senator Keating, Chairman, explained that most leases have a pooling clause in them. However, most operators go through the formal process of obtaining a communitization agreement with a written contract that is sent out to all royalty owners.

Senator Anderson moved that HB 246 BE CONCURRED IN. The motion CARRIED by a majority vote, with Senator Halligan voting "no."

CONSIDERATION OF HB 397: Senator Halligan had questions concerning costs that Montana Power Company incurred and asked Mr. Wittich for the marginal costs of MFSA compliance. Mr. Wittich said that Gene Braun had calculated some figures and broke down the costs for the Central Montana Project and Laurel to Bridger Project; and costs were itemized year by year from 1981 to 1986. Mr. Wittich explained that costs included environmental assessments by MPC and consultants, utility siting applications, and centerline approval costs. The Central Montana Project amounted to \$487,000 and the Laurel to Bridger Project total was \$284,000; and the Laurel to Bridger Project did not have centerline approval to date. Mr. Wittich indicated he would make copies of the cost accounting and make them available to the committee members. He reiterated that costs referred to in the report are environmental costs that disagree with Mr. McIntyre's testimony.

Senator Halligan said he did not understand why there was opposition if MFSA is a "give/take" process for landowners. Mr. Wittich, MPC, explained that the environmental impact is not the criteria for decision making -- "siting by environmental impact is really siting by ear" -- that is to say that whoever shouts the loudest at DNRC has the most influence. He also stated that HB 397 would give MPC the incentive to work with landowners rather than DNRC. Senator Halligan then commented that MPC is a good corporate citizen but, after dealing with 75% of the landowners, questioned what would happen to the other 25% of landowners. Mr. Wittich said it is a fallacy to think MPC would ignore the 25% and said the MPC condemns more land at present because of DNRC.

In response to Senator Halligan's next question, Mr. Wittich stated that less than 10% of the land is condemned. Condemnation proceedings take a long time and costs are prohibitive.

Senator Keating, Chairman, questioned if 69 kv lines were still being installed, and Mr. Braun, MPC, reported that the line to Jardine was 69 kv. He indicated that 90% of the land on the Jardine route was Forest Service property.

ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/11/87

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	X		
Sen. Cecil Weeding, Vice Chairman	X		
Sen. John Anderson	X		
Sen. Mike Halligan	X		
Sen. Delwyn Gage	X		
Sen. Lawrence Stimatz	X		
Sen. Larry Tveit	X		
Sen. "J.D." Lynch	X		
Sen. Sam Hofman	X		
Sen. William Yellowtail	X		
Sen. Elmer Severson	X		
Sen. Mike Walker	X		

Each day attach to minutes.

DATE March 11, 1987

COMMITTEE ON

Natural Resources

VISITORS' REGISTER

NAME		BILL #	Check One	
			Support	Oppose
Airt Wittich	MPC	397/404	✓	
Gene Braun	MPC	397/404		
Richard Parks	BCC / NPRC	404	✓	
"	"	397		✓
Claudia Masman	MEEC	397	✓	✓
"	"	404	✓	
Tom Butler	self	HB 246	✓	
Susan Johnson	BCC (NPRC)	HB 397		✓
SANDY SEATON	self	HB 397		✓
Steve Weiss	DSL	HB 370	✓	
Shirley Deaton Koff	self	HB 397		✓
Debi Brammer	MT Assn of Conservation Districts	HB 397		✓
Gary Amestoy	MT Dept of State Lands	HB 370	✓	
Don MacIntyre	DARC	HB 397		✓
Dorey Fletcher	Montana City Co	HB 246	✓	
Eric Ockert	Belgrade High School			
SCOTT LINCKMANN	BELGRADE HIGH SCHOOL			
Jon Stuchord	Belgrade High School			
Kerry Jack	MT Stockgrowers	HB 397		✓
Charles West	DARC	397		✓
Stan Bradshaw	self	397		✓
Ward Mahalan	CHEVIZON Corp	397	✓	
GEORGE OCHENSKI	MT. ENV. INF. CNTR		HB 370	397 HB
Pat Melby	Self and Beaver Creek Landowners	397		✓
Ted Rollins	ASARCO, INC	HB 397	✓	
Tom Tully	NPRC	HB 397		✓
Deanne-Joanne Spongray	MT Sierra Club	397		✓

(Please leave provided statement with guest)

COMMITTEE ON Natural Resources

STANDING COMMITTEE REPORT

March 11 19 87

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 246

THIRD reading copy (BLUE)
color

REQUIRING WELL-SPACING UNIT; POOLING APPLICANTS TO GIVE ACTUAL NOTICE

COBB (Anderson)

Respectfully report as follows: That HOUSE BILL No. 246

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Thomas F. Keating, Chairman.

HOUSE BILL NO. 246

INTRODUCED BY COBB

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE APPLICANTS FOR THE ESTABLISHMENT OF A WELL SPACING UNIT FOR AN OIL OR GAS WELL OR FOR THE POOLING OF INTERESTS IN A WELL SPACING UNIT TO GIVE ACTUAL WRITTEN NOTICE TO INFORM PARTIES AFFECTED BY THE APPLICATION; AND AMENDING SECTION 82-11-141, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-11-141, MCA, is amended to read:

"82-11-141. Administrative procedure. (1) Unless otherwise provided, the Montana Administrative Procedure Act applies to this chapter.

(2) An order or amendment thereof, except in an emergency, may not be made by the board without a public hearing upon at least 10 days' notice. The public hearing shall be held at such time and place as may be prescribed by the board, and any interested person is entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing which shall be effective upon promulgation. An emergency order may not remain in

effect more than 15 days.

(4) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice shall be made by publication in one or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part thereon is situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state. A AT LEAST 20 DAYS PRIOR TO THE PUBLIC HEARING, A person who applies to establish a well spacing unit under 82-11-201 or who applies to pool all interests in a well spacing unit pursuant to 82-11-202 is--required--to--give actual--notice--by--means--reasonably--calculated--to--inform--all parties--who--may--be--affected--by--the--application; SHALL CAUSE WRITTEN NOTICE OF ANY HEARING THEREON TO BE SERVED UPON THE RECORD OWNERS OF THE OIL AND GAS AND LEASEHOLD INTERESTS SOUGHT TO BE SPACED OR POOLED. NOTICE MUST BE GIVEN BY MAILING THE WRITTEN NOTICE, POSTAGE PREPAID, TO THEIR ADDRESSES AS SHOWN BY THE RECORD OF THE COUNTY CLERK AND RECORDER AT THE TIME THE NOTICE IS GIVEN.

(5) Proof If actual WRITTEN notice is not possible, proof of service by publication under subsection (4) shall be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is

1 published or by a foreman or principal clerk of the
2 newspaper, bulletin, or trade journal.

3 (6) Except as provided otherwise in this chapter, the
4 board may act upon its own motion or upon the petition of an
5 interested person. On the filing of a petition concerning a
6 matter within the jurisdiction of the board, the board shall
7 promptly fix a date for a hearing thereon and shall cause
8 notice of the hearing to be given. The hearing shall be held
9 without undue delay after the filing of the petition. The
10 board shall enter its order within 30 days after the
11 hearing."

12 NEW SECTION. SECTION 2. EXTENSION OF AUTHORITY. ANY
13 EXISTING AUTHORITY OF THE BOARD OF OIL AND GAS CONSERVATION
14 TO MAKE RULES ON THE SUBJECT OF THE PROVISIONS OF THIS ACT
15 IS EXTENDED TO THE PROVISIONS OF THIS ACT.

-End-